

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Axcan Scandipharm Inc.,

Plaintiff,

Civ. No. 07-2556 (RHK/JSM)

**ORDER**

v.

Ethex Corporation, *et al.*,

Defendants.

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This matter is before the Court on the Motion of Defendants ETHEX Corporation and KV Pharmaceutical Company to withdraw the memorandum of law they filed in support of their Motion for Judgment on the Pleadings. ETHEX and KV seek to withdraw the memorandum in order to file a shorter one, along with a reply memorandum, since they nearly exhausted the 12,000 words permitted under Local Rule 7.1(c) in their initial filing alone.

Having considered the Motion, **IT IS ORDERED** that the Motion (Doc. No. 26) is **GRANTED** and the memorandum will be deemed **WITHDRAWN**. The Court, however, believes it is advisable to consider not only the memorandum withdrawn, but also the Motion for Judgment on the Pleadings itself (Doc. No. 19), the Amended Motion for Judgment on the Pleadings (Doc. No. 25), and all supporting documents filed therewith (Doc. Nos. 22 and 23, and the Exhibits attached thereto). The hearing on the Motion for Judgment on the Pleadings, currently scheduled for September 19, 2007, is **CANCELED**.

Counsel for ETHEX and KV may contact the Court's calendar clerk for a new hearing date if/when they re-file their Motion and (shorter) memorandum of law in support thereof.

The Court takes this opportunity to remind the parties that a memorandum of law is the only appropriate place for legal arguments, not affidavits or other similar documents filed in support of a motion. See In re Hartford Sales Practices Litig., 192 F.R.D. 592, 597 (D. Minn. 1999) (Kyle, J.). If/when ETHEX and KV re-file their motion and supporting memorandum, the Court may construe arguments contained in non-memoranda filed in support thereof (or in opposition thereto) as an attempt to evade the spirit, if not the letter, of the Local Rules of this Court.<sup>1</sup>

Dated: July 27, 2007

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge

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<sup>1</sup> Furthermore, it may be inappropriate for the Court to consider affidavits or similar documents filed in support of a motion for judgment on the pleadings. See Fed. R. Civ. P. 12(c).